

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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| JIMMIE L. RAINES, | : | CIVIL NO. 1:05-CV-1752 |
| | : | |
| Petitioner | : | (Judge Caldwell) |
| v. | : | |
| | : | (Magistrate Judge Smyser) |
| COMMONWEALTH OF PENNSYLVANIA, | : | |
| DISTRICT ATTORNEY OF THE COUNTY | : | |
| OF ALLEGHENY, and | : | |
| ATTORNEY GENERAL OF THE STATE | : | |
| OF PENNSYLVANIA, | : | |
| | : | |
| Respondents | : | |

REPORT AND RECOMMENDATION

The petitioner, a prisoner at the State Correctional Institution at Somerset, filed this 28 U.S.C. § 2254 petition on August 29, 2005. The petitioner is challenging a conviction from the Court of Common Pleas of Allegheny County, Pennsylvania.

In reviewing the petition in the instant case, we initially overlooked the fact that the petitioner is challenging a conviction from the Court of Common Pleas of Allegheny County. By an order dated September 20, 2005, we gave the petitioner the notice required by *Mason v. Meyers*, 208 F.3d 414 (3d Cir. 2000), and ordered the petitioner to inform the court on or before

October 4, 2005 whether he wants (1) to have his petition ruled upon as filed; (2) if his pleading is not styled as a § 2254 petition, to have his pleading recharacterized as a § 2254 petition and heard as such, but lose his ability to file a second or successive petition absent certification by the court of appeals as required by 28 U.S.C. § 2244(b); or (3) to withdraw his petition and file one all-inclusive petition within the one-year statutory period prescribed by AEDPA in 28 U.S.C. § 2244(d). On October 11, 2005, the petitioner informed the court that he wants to have his petition ruled upon as filed.

A 28 U.S.C. § 2254 petition may be brought in the federal judicial district in which the state court of the conviction is located and, when the prisoner is confined in a prison located in another federal district in the same state as the state of conviction, the petition may be brought in the district of confinement. The district court for the district in which the petition is filed may transfer the petition to the district court for the district of conviction when to do so is in the interest of justice. 28 U.S.C. § 2241(d).

The petitioner is a prisoner at the State Correctional Institution at Somerset, which is in the Western District of

Pennsylvania. He was convicted in Allegheny County, which is also in the Western District of Pennsylvania.

Venue is proper in the Western District of Pennsylvania not in this district.

Therefore, it is recommended that this case be transferred to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 2241(d).

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: November 3, 2005.